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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,002	09/10/2003	Robert Bartek	7216	3498

7590 09/28/2005

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Legal Department  
10100 West Ute Avenue  
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EXAMINER

AHMAD, NASSER

ART UNIT PAPER NUMBER

1772

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/659,002

Applicant(s)

BARTEK, ROBERT

Examiner

Nasser Ahmad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,6,7 and 14-24 is/are pending in the application.  
4a) Of the above claim(s) 14-24 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,6,7 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's confirmation of election without traverse in the amendment filed on June 27, 2005 is noted.

### ***Rejections Withdrawn***

2. Claims 1-3, 6-9 and 12-13 rejected under 35 U.S.C. 102(b) as being anticipated by Sylvia (3581779) has been withdrawn in view of the amendment filed on June 27, 2005.
3. Claims 1-13 rejected under 35 U.S.C. 102(e) as being anticipated by Zanchetta (2004/0009319) has been withdrawn in view of the amendment.
4. Claims 5 and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Sylvia in view of Stierli (4442148) has been withdrawn in view of the amendment.
6. Claims 1-13 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-13 of copending Application No. 10/659,002 has been withdrawn in view of the amendment.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1, 6 and 7 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Urbanek (5434009) in view of Zanchetta (5964946) and Kyminas (4749731).

Urbanek relates to an asphalt based roofing membrane (abstract). The membrane comprises a base asphaltic layer that is reinforced with a mesh substrate embedded therein (col. 4, lines 32-36) and having top and bottom surfaces of asphalt, a barrier layer is provided on top of the base layer and a shield layer is provided over the barrier layer. The barrier layer can be acrylic based polymeric binder (col. 4 lines 37-42). The shield layer is adhered to the barrier layer and includes UV light blocking characteristics such as titanium dioxide with acrylic resin (col. 3, lines 10-15 and col. 4, lines 52-55). However, Urbanek fails to teach the presence of a release sheet over one of the top or bottom surface and that the membrane is in a roll form. Zanchetta discloses a bitumen based waterproof membrane (abstract). The bituminous layer is provided with a protective release liner and then rolled into a roll.(abstract). Therefore, it would have

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been obvious to one having ordinary skill in the art to utilize Zanchetta's teaching of providing a release liner on the asphalt layer in the invention of Urbanek with the motivation to provide for protection to the tacky bitumen surface.

Further, Kyminas discloses a roof protective coating for built-up asphalt roofs (abstract; col. 1, lines 12-31). The coating layer includes polyacrylic polymers, polyvinyl chloride polymers, etc. with reflective pigments (col. 2, lines 20-24 and 36-42). When two coats of the protective coating is provided (col. 8, lines 30-31) the first coat would function as a primer layer. Kyminas teaches that polyvinyl chloride and acrylic polymer are functionally equivalent as roof protective coating layer. Therefore, because these two materials were art-recognizes at the time the invention was made, one having ordinary skill in the art would have found it obvious to substitute polyvinyl chloride for polyacrylic polymer as the top protective coating.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Nasser Ahmad  
Primary Examiner  
Art Unit 1772  
9/23/05

N. Ahmad.  
September 17, 2005.  
September 23, 2005.